

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1478 RE
)	
VINCENT E. REED,)	
)	
Respondent.)	

ORDER GRANTING SUMMARY DECISION IN PART

We deny Vincent E. Reed’s motions for summary decision¹ and to dismiss. We grant the Missouri Real Estate Commission’s (“MREC”) motion for summary decision in part. There is cause to discipline Vincent E. Reed because he pled guilty to a criminal offense reasonably related to the real estate profession.

Procedure

On August 14, 2013, the MREC filed a complaint seeking to discipline Reed. On August 29, 2013, Reed filed a “constructive notice of conditional acceptance,” which we considered an answer to the complaint.

On October 29, 2013, the MREC filed a motion for summary decision. On November 6, 2013, Reed filed a “notice of default in dishonor consent to judgment.” On November 15, 2013,

¹ He titled it a motion for summary judgment, but it is a motion for summary decision. 1 CSR 15-3.446(6). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

Reed filed a motion for summary decision. On November 26, 2013, the MREC filed a response to Reed's motion. On December 10, 2013, Reed filed a "responsive pleading for motion to dismiss complaint." Our Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if either party establishes undisputed facts that entitle that party to a favorable decision.

Findings of Fact

1. Reed holds a real estate broker license that was current and active at all relevant times. On June 19, 2012 Reed placed his license on an inactive status.

2. On March 5, 2012, Reed entered a guilty plea in the St. Louis County Circuit Court ("the Court") to the Class D felony Non-Support, Total Arrears in Excess of 12 Monthly Payments Due Under Order of Support. The Court suspended imposition of sentence.

Conclusions of Law

We have jurisdiction to hear this type of complaint.²

I. Reed's Motions

Reed argues the MREC is in some way in default for failing to respond to his constructive notice of conditional acceptance and affidavits. This contention is without merit. Reed also appears to argue that this Commission lacks jurisdiction to hear this case because it involves a civil private matter. To the contrary, as noted above, § 621.045 gives us jurisdiction over MREC licensing discipline cases, and Reed has shown nothing to differentiate his case from other such cases. We deny Reed's motion for summary decision and motion to dismiss.

II. Cause for Discipline

The MREC has the burden of proving that Reed has committed an act for which the law allows discipline.³ The MREC argues there is cause for discipline under § 339.100:

² Section 621.045. Statutory references, unless otherwise noted, are to the 2012 Supplement to the Missouri Revised Statutes.

³ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

2. The [MREC] may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(16) Committing any act which would otherwise be grounds for the [MREC] to refuse to issue a license under section 339.040;

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Section 339.040.1 sets forth the qualifications for licensure. Applicants must prove they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

A. Criminal Offense – Subdivision (18)

Although Reed makes many arguments, he provides no evidence to counter the certified court records proving he pled guilty to Criminal Nonsupport under § 568.040:

1. A person commits the crime of nonsupport if such person knowingly fails to provide adequate support for his or her spouse; a parent commits the crime of nonsupport if such parent knowingly fails to provide adequate support which such parent is legally obligated to provide for his or her child or stepchild who is not otherwise emancipated by operation of law.

5. Criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess of an aggregate of twelve monthly payments due under any order of support issued by any court of competent jurisdiction or any authorized administrative agency, in which case it is a class D felony.

The guilty plea itself, without regard to the underlying conduct, is sufficient to find discipline under § 339.100.2(18) if we find the criminal offense (1) is reasonably related to the qualifications, functions or duties of a real estate professional, (2) has an essential element of fraud, dishonesty or an act of violence, or (3) involves moral turpitude.

1. Reasonably Related

Reasonable relation is a low threshold. To relate is to have a logical connection.⁴

Criminal nonsupport is reasonably related to the duties of a real estate broker because the duties involve financial dealings. Reed's failure to provide the required financial transactions for his family reflects on the ability to enter into other financial transactions in business. There is cause for discipline under § 339.100.2(18).

2. Essential Element

An essential element is one that must be proven for a conviction in every case.⁵ The MREC argues that dishonesty is an essential element of criminal nonsupport. Dishonesty is a lack of integrity or a disposition to defraud or deceive.⁶ A failure to pay money due does not require a finding of fraud or deceit. There is no cause for discipline under § 339.100.2(18).

3. Moral Turpitude

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty

⁴ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).

⁵ *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

⁶ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”^{7]}

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,⁸ a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:⁹

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.¹⁰

One court found that criminal nonsupport was a crime involving moral turpitude.¹¹ But that 1994 case predated *Brehe*, so there is no analysis of the category of the crime. The *Warren* court compared the failure to pay child support with the failure to pay income tax¹² – a crime the *Brehe* court specifically set forth as a Category 3 crime as noted above. We find that criminal nonsupport is a Category 3 crime, but we have no evidence of the related factual circumstances beyond what appears in the court records. We do not find this is a crime involving moral turpitude at this time. The MREC may present evidence at the hearing of “related factual circumstances” that would allow us to make this finding.

⁷ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

⁸ 213 S.W.3d 720 (Mo. App., W.D. 2007).

⁹ *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

¹⁰ *Brehe*, 213 S.W.3d at 725.

¹¹ *In re Warren*, 888 S.W.2d 334, 336 (Mo. banc. 1994).

¹² *Id.*

B. Committing an Act/Grounds for Refusal – Subdivision (16)

A guilty plea resulting in a suspended imposition of sentence does not collaterally estop the issue of whether Reed committed a criminal offense.¹³ A guilty plea is evidence of the conduct charged. The plea constitutes a declaration against interest, which the defendant may explain away.¹⁴ In his many pleadings, Reed denied committing the underlying conduct of failing to pay child support, but his denial neither “explains away” the evidence of the conduct charged, nor does it refute the fact that he entered a plea of guilty to such charge.¹⁵ Therefore, based on the admissible evidence before us, we find Reed committed the criminal offense of Criminal Nonsupport.

We also find that, by committing Criminal Nonsupport, Reed committed an act that would be grounds for denial of a license under § 399.100.2(16). Good moral character is honesty, fairness, and respect for the law and the rights of others.¹⁶ By failing to meet his legal obligation to provide child support, Reed showed a lack of respect for the law and the rights of others. His lack of good moral character is grounds to discipline his real estate license.

Summary

We deny Reed’s motions for summary decision and to dismiss.

We grant the MREC’s motion for summary decision in part. Reed is subject to discipline under § 339.100.2(18) because he pled guilty to a criminal offense reasonably related to the real estate profession, and his lack of good moral character is grounds to discipline his license under § 339.100.2(16). We deny the motion for summary decision in part, as we lack sufficient evidence of the relevant factual circumstances of Reed’s criminal offense to determine that he

¹³ *Director of the Department of Public Safety v. Bishop*, 297 S.W.3d 96 (Mo. App., W.D. 2009).

¹⁴ *Nichols v. Blake*, 418 S.W.2d 188, 190 (Mo. 1967).

¹⁵ The denials contained in Reed’s “Affidavit of Specific Negative Averment,” though sworn under oath, establish only that Reed “believes” the MREC has no evidence to support its motion for summary decision. The affidavit provides no facts, and, therefore, no admissible evidence to refute those established by the MREC.

¹⁶ *Hernandez v. State Bd. of Regis’n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

committed a crime involving moral turpitude and should be disciplined under § 339.100.2(18).

The MREC shall inform us by January 30, 2014, if it wishes to present such evidence at the hearing currently scheduled for February 4, 2014.

SO ORDERED on January 27, 2014.

\s\ Mary E. Nelson

MARY E. NELSON

Commissioner